

**THE REPUBLIC OF UGANDA**

**IN THE HIGH COURT OF UGANDA AT KAMPALA**

**(LAND DIVISION)**

**MISCELLANEOUS APPLICATION NO. 1145 OF 2020**

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**(ARISING OUT OF CIVIL SUIT NO.0531 OF 2020)**

**1. NEGALAMBIRE FARUKU**

**2. SWAIBU KAGOLO**  
**3. SULAIMANI KAGOLO.....APPLICANTS**

**VERSUS**

**WOIRA BRIAN.....RESPONDENT**

**Before: Lady Justice Alexandra Nkonqe Ruqadya**

**RULING:**

**Introduction:**

This application was filed under **orders 36 rule 3 and 4 and 52 rules 1 and 3 of the Civil Procedure Rules and section 98 of the Civil Procedure Rules**. 3<sup>rd</sup> applicant seeks unconditional leave of this court to appear and defend the suit and for costs of this application.

**Grounds o f the application:**

The grounds of the application are provided in detail in the affidavit of Mr.Sulaimanl Kagolo, the applicant.

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Briefly, that the suit property comprised in Banda B2 village along Jinja Road measuring *27.3 ftx71ftx35ftx16ft* is and has been jointly owned by Sumani Kavulu, Namutebi Hawah, Faruku Negalambire and Nuhu Kizito, since 1991.

That the land in contention forms part of the estate of the late Swalik Kagolo and was bequeathed to Sumani Kavulu, Namutebi Hawah, Faruku Negalambire and Nuhu Kizito, who upon the demise of Swalik Kagolo on 15<sup>th</sup> November 1991 took immediate possession as beneficiaries. That to date however letters of probate of the estate of Swalik Kagolo have not been obtained.

That the four beneficiaries in the year 2000 gave the 2<sup>nd</sup> and 3<sup>rd</sup> defendants permission to live, stay and utilise the suit property, thus being in physical possession to date.

The applicant avers that the 2<sup>nd</sup> defendant however being a minor, the suit is illegal, and is besides premature and misconceived and ought to be struck off.

The applicant was represented by ***M/S Kaggwa & Kaggwa Advocates*** while the respondent was represented by ***M/S Kafuko Ntuyo & Co. Advocates.***

The respondent did not file an affidavit in reply but as directed, filed submissions in writing.

**Consideration o f the issue:**

The respondent in his submissions claimed that the 1<sup>st</sup> defendant had sold the land in dispute to him, and had asked for a period of five months to look for alternative accommodation, which the respondent had agreed

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to.

That after the agreed time the 1<sup>st</sup> defendant had vacated the house but left his children. The respondent accordingly filed this action under summary procedure, **order 36 rule 2 of the CPR** for recovery of land,

claiming that the defendants had no defence to the claim.

**Order 36 rule 2 of the CPR** states that where a plaintiff seeks a debt or liquidated demand in money payable by the defendants with or without interest arising out of a contract, a bond, a guaranty or actions to recover land with or without a claim for *mesne* profits, he may proceed by way of a summary procedure, as enshrined in that order.

Such application must be accompanied by an affidavit by the plaintiff verifying the cause of action, and stating that in his/her belief the defendant has no defence to the claim.

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Secondly, he/she must indicate that there is a reasonable ground for defence against the claim. (***Makula Interglobal Trade Agency vs Bank of Uganda HCCS No. 950 of 1985***).

It is also trite law that a summary procedure should only be resorted to in clear and straight forward cases, where the demand is liquidated and where there are no points for court to try.

Thus in the case of ***Uganda commercial bank vs mukooome agencies [1982] HCB 22***, the Court of Appeal justices unanimously held that in applications for leave to appear and defend in summary suits the defence and triable issues must not only be disclosed but that the intended WSD should be annexed to the application, as this would assist in helping court to make up its mind whether to refuse or grant the application.

I have clearly studied and analysed the application, the supporting affidavit and evidence on record.

It is generally accepted that at this stage, the court should not enter upon a trial on any of the issues raised. (***Jimmy Kasule vs Steel Rolling Mills [1995] 11***).

The summary plaint in this case, refers to an agreement of sale dated 21<sup>st</sup> November, 2019 in which the plaintiff/respondent paid a total sum of ***Ugx 61,000,000/=*** to the 1<sup>st</sup> defendant, as purchase price for the suit land. In his summary plaint the plaintiff/respondent sought for an order of eviction.



The applicant on his part is required to provide not only the proposed WSD but also evidence that he or she intends to rely on, which he has done in the present case.

5 Among the documents presented for his defence was a hand written will dated 20<sup>th</sup> December, 1984, purported to have been by Haji Swalik Kagolo, the original owner of the suit land, under which he had made bequests to his 36 children. **(Refer to Annextures 'A' and 'B').**

10 **Annixture C**, is the draft WSD which in summary challenges the validity of the claim based on a will which as noted is yet to be proved by this court.

15 Since there are triable issues being raised concerning the ownership of the suit land, and other matters as raised which cannot be resolved save through a formal trial, I will accordingly allow the prayer by the applicant to present his defence for a full trial as in any other ordinary suit.

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In the premises, the following orders are made:

- 1) *The WSD is to be served within 15 days of the delivery of this ruling.***
  
- 2) *The plaintiff/respondent shall file a reply to the defence with ten days after service of the WSD has been effected.***
  
- 3) *Matter to proceed for mediation.***

**4)**

**5) Report on mediation to presented within 60 days  
after close of the pleadings.**

5 Costs in the cause.



**Alexandra  
Nkpilge Rugadya**

**Judge**

**1<sup>st</sup> February, 2021**